



Jersey Financial
Services Commission

Feedback on Consultation Paper

No. 3 2016

MiFID II – Feedback to a consultation on whether to introduce an EU equivalent regime in Jersey

Issued: 14 December 2016

Consultation Feedback

This paper reports on responses received by the Jersey Financial Services Commission (JFSC) to its Consultation Paper No.3 2016 (MiFID II – Consultation on whether to introduce an EU equivalent regime in Jersey).

Further enquiries concerning the consultation may be directed to:

Mike Jones
Director, Policy

Telephone: +44 (0) 1534 822172
Email: m.jones@jerseyfsc.org

Jersey Financial Services Commission
PO Box 267
14-18 Castle Street
St Helier
Jersey
JE4 8TP

Phil Robson
Senior Adviser, Policy

Telephone: +44 (0) 1534 822189
Email: p.robson@jerseyfsc.org

Jersey Financial Services Commission
PO Box 267
14-18 Castle Street
St Helier
Jersey
JE4 8TP

Glossary of Terms

European Union and International Terms

AIFMD	Alternative Investment Fund Managers Directive (2011/61/EU)
CRD	Capital Requirements Directive (2013/36/EU)
CRD IV	Equals CRD + CRR (the regulatory package)
CRR	Capital Requirements Regulation ((EU) No 575/2013)
EBA	European Banking Authority
EMIR	European Markets Infrastructure Regulation ((EU) No 648/2012)
ESMA	European Securities and Markets Authority
EU	The European Union
ICSD	Investor Compensation Scheme Directive (97/9/EC)
MAD	Market Abuse Directive (2014/57/EU)
MAR	Market Abuse Regulation ((EU) No 596/2014)
MiFID	Markets in Financial Instruments Directive (2014/65/EU)
MiFID I	Markets in Financial Instruments Directive (2004/39/EU)
MiFID II	equals MiFID + MiFIR (the regulatory package)
MiFIR	Markets in Financial Instruments Regulation ((EU) No 600/2014)
MTF	Multilateral Trading Facility
OTC	Over-the-Counter, a term linked with off-exchange securities transactions
OTF	Organised Trading Facility
third-country	means any jurisdiction outside the EU, including Jersey

Jersey Terms

ANLA	Adjusted Net Liquid Assets
Consultation Paper	Consultation Paper No.3 2016 – MiFID II – Consultation on whether to introduce an EU equivalent regime in Jersey
JFSC	Jersey Financial Services Commission
CoP	The JFSC’s Codes of Practice, in general this consultation paper refers to the Codes of Practice for Investment Business. However, the scope of MiFID II may affect other JFSC Codes of Practice
FS(J)L	Financial Services (Jersey) Law 1998
IB	Investment Business, see Article 2(2) of the FS(J)L
FSB	Fund Services Business, see Article 2(10) of the FS(J)L
TCB	Trust Company Business, see Article 2(3) of the FS(J)L
Registered Person	A person who is registered, or holds a permit or certificate, as applicable, under one or more of Jersey’s regulatory laws. The regulatory laws are the Alternative Investment Funds Regulations, the Banking Business Jersey Law, the Collective Investment Funds Jersey Law, the Financial Services Jersey Law, the Insurance Business Jersey Law and the Proceeds of Crime (Supervisory Bodies) Jersey Law.

Links to EU Legislative Texts

CRD	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN
CRR	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0575&from=EN
EMIR	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN
ICSD	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997L0009&from=EN
MAD	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0057&from=EN
MAR	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN
MiFID	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=EN
MiFIR	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN
MiFID II Delegated Directive	http://ec.europa.eu/finance/securities/docs/isd/mifid/160407-delegated-directive_en.pdf

Contents

Consultation Feedback	2
Glossary of Terms	3
Contents	5
1 Executive Summary	7
1.1 Overview.....	7
1.2 The Brexit referendum result.....	7
1.3 Feedback received.....	8
1.4 Next steps.....	8
2 Summary of Responses	9
2.1 Structure of this section	9
2.2 Question 1: Would you support the introduction and substitution of MiFID II financial definitions into the FS(J)L where necessary?	9
2.3 Question 2: The JFSC welcomes comment from Class D Registered Persons and other Registered Persons as to whether it should apply an optional exemption to Class D Registered Persons who meet certain criteria.	10
2.4 Question 3: Would the introduction of MiFID’s enhanced governance requirements cause you or your firm difficulties? Please explain your reasons.	11
2.5 Question 4: The JFSC is very interested to receive comment from Registered Persons who have experience of the EU financial resources requirements compared with Jersey’s. Please comment on your experience of the two systems.	11
2.6 Question 5: Would you support the introduction of a Jersey investor compensation scheme, based on the minimum required EU level of cover, taking into account the potential levy on your IB revenues, if it was a necessary condition of equivalence?	13
2.7 Question 6a: What impact would having, or not having, the EU passport to access per se professional investors (not elective professional investors) have on your business?	14
2.8 Question 6b: What impact would adopting MiFID’s thresholds, tests and exemptions for elective professional investors into Jersey’s CoP have on your business?	15
2.9 Question 6c: What impact would not having the resultant reputational ‘kite mark’ brought by MiFID II equivalence have on your retail client business?	15
2.10 Question 7: The JFSC expects that in order to meet MiFID equivalence Jersey’s CoP would have to address the points made in the “Other Conduct requirements” section of the Consultation Paper (section 4.6.7 of that Paper). Please provide your comments on the impact of those requirements on your business.	17

- 2.11 Question 8: Please comment how any of the statements concerning Internal Systems and Controls (section 4.7 of the Consultation Paper) will impact your business. 19
- 2.12 Question 9: Please offer your comments on the transaction reporting requirements (outlined in sub-section 4.8 of the Consultation Paper). 20
- 2.13 Question 10: If MiFIR’s derivatives trading obligation were to apply in Jersey’s financial services regime, how would its requirements affect your business? 20
- 2.14 Question 11: The JFSC is keen to receive comments from any Registered Persons who are engaged in algorithmic trading, and how they plan to adapt to the new requirements set out in MiFID. 21
- 2.15 Question 12: The JFSC is keen to receive comment on the MiFID requirements from any Registered Person who would describe themselves as a market maker or Systematic Internaliser. 22
- 2.16 Question 13: The JFSC welcomes comment from Registered Persons who engage in commodities trading on the relevant MiFID II requirements and ESMA’s indicated range of position limits. 22
- 2.17 Question 14: The JFSC welcomes stakeholder comment on sanctions and powers of intervention (as covered under Section 4.12 of the Consultation Paper). 23
- 2.18 Question 15: Please comment on the JFSC’s policy proposal with respect to derivatives (Section 5 of the Consultation Paper). 24
- 2.19 Question 16a: Given the comments and opinions expressed in the Consultation Paper, do you agree or disagree with the proposal that Jersey’s financial services regime should seek to become MiFID II equivalent? 25
- 2.20 Question 16b: Should the JFSC apply MiFID II standards to all investment business, irrespective of the location of the client? 28

Appendix A – Analysis of Respondents29

1 Executive Summary

1.1 Overview

- 1.1.1 Consultation Paper No.3 2016 (the Consultation Paper) sought stakeholder views as to whether Jersey should seek MiFID II equivalence, and discussed several differences between Jersey's and the EU's financial services regimes. The JFSC received 27 responses overall. On the question of equivalence, the JFSC received a range of responses, as summarised below:
- 1.1.1.1 12 respondents either disagreed with the proposal to seek MiFID II equivalence, or expressed considerable concerns about doing so;
 - 1.1.1.2 Nine respondents were in favour of Jersey seeking MiFID II equivalence; and
 - 1.1.1.3 Six respondents had no strong opinion either way, seeing both costs and benefits of pursuing equivalence.
- 1.1.2 Of the 12 respondents who were not in favour of Jersey achieving MiFID II equivalence (i.e. they either disagreed with, or expressed significant concerns about, MiFID II equivalence), there was something of a split between those whose primary concern was the application of MiFID II requirements to the funds industry (six respondents), and those who were concerned about the impact on the current investment business regime (six respondents).
- 1.1.3 Respondents' overall view on MiFID II equivalence was largely reflected in their responses to the more specific questions posed in the Consultation Paper, i.e. those who supported MiFID II equivalence tended to identify more benefits and less cost with MiFID II alignment, whilst those who were not supportive of equivalence tended to identify fewer benefits and greater costs. There were, however, some exceptions to this, with the introduction of an investor compensation scheme, an 'appropriateness' regime, improved best execution requirements and enhanced regulatory sanctions and powers being positively received generally, whilst most affected respondents noted concerns about the costs of the transaction reporting requirements.
- 1.1.4 A more detailed analysis of the general views expressed about MiFID II equivalence is set out in section 2.19 (pages 25-27) of this Feedback Paper, where responses to question 16(a) of the Consultation Paper are analysed.
- 1.1.5 A breakdown of respondent licences and investment activities as defined by MiFID currently being carried on by respondents is included in Appendix A of this Feedback Paper.

1.2 The Brexit referendum result

- 1.2.1 The JFSC's MiFID II equivalence consultation took place during the latter part of the Brexit referendum campaign and closed after the referendum result. Many respondents felt that the referendum result significantly reduced the benefits of equivalence, citing the fact that Jersey's EU client base, less the UK, represented a small minority of overall clients using the services of Jersey's financial services providers.
- 1.2.2 The future shape of the relationship between the UK and the EU, and the timeframe for achieving any new relationship, is currently unclear. At this stage, the JFSC is monitoring developments in this area and any impact (positive or negative) this could have on the Jersey financial services industry (the Industry) or regulatory settings. The

subject of MiFID II equivalence is clearly one area in which Brexit developments could impact but, given the current level of uncertainty, the JFSC considers it is too early to reach any firm conclusions about how the Brexit vote will impact on the approach to equivalence.

1.3 Feedback received

- 1.3.1 The JFSC received 27 responses to this consultation from a broad grouping of Registered Persons and other stakeholders. Six of these responses were passed to the JFSC via Jersey Finance Limited. Of those six responses, three were anonymous.
- 1.3.2 Section 2 of this Feedback Paper provides a summary of the substantive comments received in order of the questions posed in the Consultation Paper.
- 1.3.3 The JFSC is very grateful to the respondents for taking the time to consider and comment on the proposals contained within the Consultation Paper. Each known respondent has been sent a copy of this Feedback Paper.

1.4 Next steps

- 1.4.1 The JFSC will work with Industry, Government and other stakeholders in order to determine the most appropriate approach to the pursuit or otherwise of MiFID II equivalence. We expect to be in a position to make a strategic decision on this approach in the first half of 2017. This strategic decision will determine what further work and consultation is necessary, but in any event the JFSC will set out the rationale behind the proposed approach.
- 1.4.2 The JFSC has established a stakeholder working group, comprised of the known respondents to the Consultation Paper, which has already begun to consider some of the key matters arising from the consultation process.
- 1.4.3 Irrespective of the final approach on MiFID II equivalence, the JFSC expects to make a number of changes to the IB CoP in 2017.
- 1.4.4 Readers may be aware that in May 2016, the Council of the European Union and the European Parliament agreed to delay the entry into force of MiFID II by one year, to 3 January 2018.
- 1.4.5 The JFSC will continue to engage with the European Union regarding the equivalence process and timescales.

2 Summary of Responses

2.1 Structure of this section

- 2.1.1 This section summarises the substantive comments received in reply to the questions and proposals set out in the Consultation Paper.

2.2 Question 1: Would you support the introduction and substitution of MiFID II financial definitions into the FS(J)L where necessary?

- 2.2.1 As noted earlier, a particular respondent's general view on equivalence tended to shape most of their responses to individual questions posed in the Consultation Paper. This was particularly evident in responses to this question. The JFSC received 22 responses to this question. Opinion was split between those who supported this proposition (11), those who gave qualified support for the proposition (five) and those who were against it (six).
- 2.2.2 The 11 respondents that supported the proposition to substitute MiFID II financial definitions into the FS(J)L, where necessary, offered several reasons for their support. The most common was to provide clarity for cross-border business through the application of common standards. Other reasons included: that MiFID II was being applied by the parent company and consequently would yield economies of scale for the Jersey operation, that incorporating MiFID II definitions would have a long term benefit in making it easier to keep up with EU regulatory developments; and that the application of MiFID II definitions would level the playing field in the understanding of the fundamental definitions underpinning the regulatory requirements.
- 2.2.3 The five respondents who offered their qualified support for the proposition to substitute MiFID II financial definitions into the FS(J)L, where necessary, almost unanimously offered the same qualification to their support. In principle they did not object to the changes in definitions as they affect IB, their concern was that pursuing MiFID II equivalence could draw into scope Jersey's Funds and FSB sectors. Those respondents argued that bringing Funds, FSBs and exempt structures into the scope of MiFID II would make these services and activities uncompetitive, because of the regulatory obligations and associated costs, without any notable gain.
- 2.2.4 The six respondents who opposed the proposal to substitute MiFID II financial definitions into the FS(J)L offered a variety of reasons for their opposition. The top three reasons for opposing the proposal were as follows: Firstly, the potentially damaging cost of MiFID's regulatory burden on the funds and FSB sectors (as discussed above), and TCB sectors (see responses to Question 3). Secondly, the significant work required to understand the changes and implement them through the development of new systems and controls. Thirdly, the unnecessary cost of introducing an EU regime on a firm whose clients are outside the EU.

JFSC Response:

Support for implementing the MiFID II definitions within the FS(J)L was, understandably, linked to the particular respondent's view on the appropriateness of seeking equivalence, with those 'for' equivalence agreeing that reflecting MiFID II definitions would be a sensible way forward, and vice versa.

The JFSC notes the significant concerns about the broad application of MiFID II and the potential impact, and limited benefits, of applying that regime to particular niche areas of Jersey's financial services sector, including the funds, FSB and TCB sectors. The JFSC considers that further work is necessary to i) understand more about the scope of coverage of MiFID II in those areas, and any exemptions that may be available, and ii) in the event that those areas are caught by MiFID II, to consider further the appropriateness of the relevant MiFID II requirements to those sections of Industry.

2.3 Question 2: The JFSC welcomes comment from Class D Registered Persons and other Registered Persons as to whether it should apply an optional exemption to Class D Registered Persons who meet certain criteria.

- 2.3.1 The JFSC received nine responses to this question. Five respondents expressed support for introducing an optional exemption for Class D Registered Persons who met the noted criteria. Two respondents were cautious towards introducing such an exemption. One respondent was against the optional exemption (with the remaining respondent not giving an opinion).
- 2.3.2 Of the five respondents who expressed support for implementing the optional exemption, none offered any reason for their support. The JFSC assumes that these respondents support the optional exemption because of the reduced supervisory requirements that were summarised in the Consultation Paper (paragraph 4.3.2).
- 2.3.3 The two respondents who expressed caution towards introducing an optional exemption noted concerns around measures that would reduce consumer protection (including any restriction on coverage by an investor compensation scheme) or professional standards. One respondent also noted the costs associated with development and continued oversight of a dual regime.
- 2.3.4 The one respondent who was against the introduction of the exemption noted similar issues to those who were concerned, i.e. lower levels of consumer protection and/or professional standards.
- 2.3.5 Of the four IB Category D firms that responded to the consultation, one supported the introduction of an exemption regime, two expressed no opinion and one would welcome the exemption but expressed some caution.

JFSC Response:

Respondents generally, and Class D IB firms themselves, offered limited support for the optional exemption that may be available to some Class D IB firms. Given these responses and the relatively limited nature of the exemption, the JFSC considers that there might be insufficient benefit in offering such an exemption in the event that a decision is made to pursue MiFID II equivalence. However, this would require further consideration and engagement with affected firms.

2.4 Question 3: Would the introduction of MiFID's enhanced governance requirements cause you or your firm difficulties? Please explain your reasons.

- 2.4.1 The JFSC received 24 responses to this question. Of the 24 respondents, 13 stated that MiFID's enhanced governance requirements would cause difficulties for them. 11 respondents said these governance requirements would not cause them difficulties (two of these were not Registered Persons).
- 2.4.2 One theme dominated the opinions of the 13 respondents that believed that MiFID's enhanced governance requirements would cause them difficulties. Eight of these respondents considered that CRD's restrictions on executive and non-executive directorships (brought in through Article 9 of MiFID) created a potential problem for the funds and/or TCB sectors. Those respondents stated that in these sectors it is common practice for directors to hold more directorships than is permitted by CRD. It was also pointed out that the 'Group' exemption could not apply to this type of business.
- 2.4.3 Other difficulties generated by compliance with the governance requirements under CRD/MiFID included an excessive cost of compliance (including supporting infrastructure, disaggregation of data, ongoing cost of governance testing framework) for limited benefits, concerns about the need for a quota approach to diversity, and concerns that with a relatively small pool of qualified directors available within Jersey, restrictions on directorships would dilute the quality of boards of directors.
- 2.4.4 Nine Registered Persons remarked that implementing MiFID's enhanced governance requirements would not cause difficulties for their firm. These firms included some banks and other firms with a range of IB and FSB licences. Most of these respondents did not specify a reason for why they did not foresee difficulties in implementing MiFID's governance requires, apart from two. These two Registered Persons stated that they were branches of MiFID regulated parents who would be implementing MiFID II as part of Group policy.

JFSC Response:

The JFSC notes the significant concerns about the broad application of MiFID II (and linked legislation including CRR and CRD) and the potential impact, and limited benefits, of applying that regime to particular niche areas of Jersey's financial services sector, including the funds, FSB and TCB regimes. The JFSC considers that further work is necessary to i) understand more about the scope of coverage of MiFID II and linked legislation in those areas, and any exemptions that may be available, and ii) in the event that those areas are caught by the legislation, to consider further the appropriateness of the relevant MiFID II requirements to those sections of Industry.

2.5 Question 4: The JFSC is very interested to receive comment from Registered Persons who have experience of the EU financial resources requirements compared with Jersey's. Please comment on your experience of the two systems.

- 2.5.1 The JFSC received two responses from Registered Persons who had comparative experience of Jersey's and the EU's prudential requirements. The JFSC also received related remarks from five other respondents.

- 2.5.2 Those who did have comparative experience of the two regimes noted that there are some clear similarities between the two regimes, but also some significant distinctions. Whilst the methodology for calculating capital is very similar, a key differentiator is the EU requirement for an ICAAP (Internal Capital Adequacy Assessment Process). The ICAAP requires a significant level of quantitative and qualitative analysis which those respondents felt was unnecessarily burdensome in many cases, particularly where firms were not taking on market risks themselves. From the responses it is difficult to draw any clear conclusions about the comparative levels of capital required under the two regimes.
- 2.5.3 Other differences noted between the two regimes include increased reporting frequency, complexity and validation under the EU framework, all of which have cost implications. The respondents generally considered the Jersey ANLA framework to be more appropriate to investment business, more intuitive, and easier to report against, with no significant impact on appropriateness of capital requirements.
- 2.5.4 The remarks made by the five other respondents covered different issues. One respondent queried whether there would be any prudential impact on banks with IB licences, and whether a distinction should be made against banks incorporated in the EU and banks incorporated outside the EU.
- 2.5.5 Two respondents noted the EBA recent report on the CRD IV regime and its suggested simplification of prudential requirements for IB firms. Those respondents considered that this could significantly streamline the EU financial resources requirement framework for investment businesses, and recommended that the JFSC monitor this review.
- 2.5.6 One respondent raised general concerns about the disproportionate costs of complying with the EU financial resources requirements. One other respondent noted that improved and more transparent solvency requirements would benefit consumers, particularly with respect to the separation of consumer assets from the 'advising' company.

JFSC Response:

Further work is required to understand more about the appropriateness of the two financial resource regimes considered above. However, on the face of it, some of the responses suggest that the EU regime may in some cases impose costs and complexity that may be unduly onerous when considered against the potential benefits they provide.

It may be possible to argue that the current ANLA regime provides an appropriate prudential framework either on an ongoing basis or in the interim whilst the EBA conducts its review of the appropriateness of the prudential framework for investment businesses. However, the possibility of adopting such an approach will need to be considered more fully and take into account factors which are not currently known, including the particular terms of the MiFID II equivalence assessment and the further analysis of the comparative prudential regimes noted above.

2.6 Question 5: Would you support the introduction of a Jersey investor compensation scheme, based on the minimum required EU level of cover, taking into account the potential levy on your IB revenues, if it was a necessary condition of equivalence?

- 2.6.1 The JFSC received 22 responses to this question to which 15 respondents supported the introduction of an investor compensation scheme, although seven of these qualified their support, typically in respect of costs and the level of customer benefit. Two respondents were against the introduction of an investor compensation scheme. Five respondents made remarks on the proposal to introduce an investor compensation scheme, but did not give a clear indication of whether they supported such a scheme.
- 2.6.2 Of the eight respondents who offered unqualified support for the introduction of an investor compensation scheme, the main reasons for their support were the consumer protection it affords, the need to bring Jersey into line with equivalent jurisdictions, and the potential link between such a scheme and MiFID II equivalence.
- 2.6.3 The seven respondents who offered qualified support for an investor compensation scheme identified similar reasons for support to those referred to in the above paragraph. A variety of different factors were cited in qualifying their support. These include the following: i) such a scheme would not add benefit to a significant proportion of financial services activity in Jersey, which is aimed at sophisticated and professional investors, ii) the cost of the scheme would have a material impact on whether or not such a scheme would be supported, iii) the establishment of such a scheme should be accompanied by reduced professional indemnity insurance requirements, iv) class D investment business firms should not be required to contribute to any such scheme as they do not hold client monies, v) the potential inconsistencies of such a scheme (for example, between a managed account client and a fund investor), and vi) the benefit of including non-resident investors in such a scheme.
- 2.6.4 Two respondents were against the introduction of an investor compensation scheme. Both of those respondents felt that the introduction of an investor compensation scheme would be costly without providing tangible benefit.
- 2.6.5 The five respondents who made remarks without offering an opinion on the proposal to introduce an investor compensation scheme made the following remarks. One challenged the JFSC's estimate of a levy of between 0.2% and 0.4% of revenues as being unfeasible because of the small number of Jersey firms (although some other responses suggested that such a levy was realistic) and noted that a levy of material size would negatively affect return on equity. A second respondent noted that UK investment companies were outside the scope of the UK investor compensation scheme. A third correspondent noted that a levy associated with such a scheme would not be welcomed by those firms with no, or minimal, benefit from MiFID II equivalence.
- 2.6.6 Two respondents questioned how the levy would be set and allocated across businesses with different risk profiles. One of those respondents directed the JFSC to the recent European Commission green paper on retail financial services.

JFSC Response:

The introduction of an investment compensation scheme, if necessary to achieve equivalence under MiFID II, was generally welcomed by respondents. Many respondents appeared to welcome such a scheme in any event, without specifically referring to the question of equivalence. Some of the respondents who did not support MiFID II equivalence did support the introduction of an investor compensation scheme in Jersey.

Although the introduction of an investor compensation scheme was generally welcomed by respondents, a number of comments were made about the practical implications of operating such a scheme. In particular, respondents raised questions about the cost of such a scheme and its benefits/coverage, and how the scheme would be funded and operated. The JFSC notes the useful comments made by respondents and these will be used to inform any further consideration of this matter, which we expect would need to be subject to a separate detailed consultation exercise in conjunction with Government.

2.7 Question 6a: What impact would having, or not having, the EU passport to access per se professional investors (not elective professional investors) have on your business?

- 2.7.1 The JFSC received 17 responses to this question. 11 respondents felt that the MiFID II third-country passport for professional investors would have no or negligible impact on their business. Two respondents could see some positive impact. The other four responses either i) set out some general observations from respondents that were not Registered Persons, or ii) were from Registered Persons who did not know what the impact would be.
- 2.7.2 Of the 11 respondents who felt that the MiFID II professional investor passport would have no or negligible impact on their business, only six of these respondents offered a reason for their opinion. The reasons given related to the fact that the respondents' business models did not target relevant markets (i.e. non-retail investors/EU clients).
- 2.7.3 The UK's Brexit referendum result was a consideration for one respondent, who noted that the UK's withdrawal from the EU would significantly reduce its exposure to EU clients.
- 2.7.4 The composition of the 11 respondents who saw no or negligible impact on their business from the MiFID II professional passport was: six banks (one responded anonymously, the other five hold IB and/or FSB licences), one IB and FSB Registered Person, two IB Registered Persons, one anonymous respondent and one FSB Registered Person.
- 2.7.5 Two respondents saw some positive impact on their business from the MiFID II professional investor passport. Their reason being that the MiFID II professional investor passport could present a future business opportunity. These respondents were one bank, with an IB licence, and one IB Registered Person.
- 2.7.6 The other four responses are summarised below: One respondent noted that the extent of any impact was not known as it depended upon the range of activities caught within any MiFID II-equivalent regime. A second respondent, a non-Registered Person, noted that such a regime would mean better standards for consumers. A third respondent, who did not currently have an IB licence, noted that the ability to benefit from passporting would be of value if they did have an IB licence. The fourth respondent's comment was discounted because they appeared to confuse AIFMD and MiFID II equivalence.

JFSC Response:

The JFSC notes that respondents generally identified limited positive impact in terms of using the passport to provide investment services to clients in the EU. These views reflect the relatively small proportion of professional EU-based clients identified through the JFSC's initial interaction with a number of investment business (as noted in the Consultation Paper, that exercise revealed that only 0.7% of those firms' clients were professional clients from the EU (with 0.5% being UK clients)).

Whilst current business activity does not appear to rely on the potential to passport investment services to EU professional clients, there are a small number of firms that would find such a passport beneficial. The ability to benefit from a passport in the future may also provide an opportunity for new or existing businesses to develop, although the scope for this is unclear and will depend on a number of factors.

The apparent limited direct benefits associated with achieving MiFID II equivalence is something that will be taken into account in determining whether/how to pursue MiFID II equivalence.

2.8 Question 6b: What impact would adopting MiFID's thresholds, tests and exemptions for elective professional investors into Jersey's CoP have on your business?

- 2.8.1 The JFSC received 18 responses to this question. Nine respondents felt that adopting MiFID's thresholds, tests and exemptions for elective professional investors would have no or negligible impact on their business. Four respondents also noted no significant impact, but did identify process costs associated with such a change. Three respondents were unable to determine, at this stage, whether there would be a significant impact. Of the other two respondents, one felt that there would be no impact because the Jersey thresholds are stricter than the EU thresholds, the other welcomed the clarity provided by the MiFID thresholds.
- 2.8.2 Of the nine respondents who felt that MiFID's thresholds, tests and exemptions for elective professional investors would have no or negligible impact on their business, the reasons given were that the firm either did not seek clients who could be classified as elective professional investors or they already applied MiFID's requirements in this area as part of Group policy. One of those respondents noted that using the MiFID threshold would be of benefit from a consistency perspective if they looked to expand their business.

JFSC Response:

Although the JFSC notes the potential cost of system changes to reflect a revised threshold, it does not appear that adopting the MiFID threshold for categorising elective professional clients will have any other significant detrimental impact.

2.9 Question 6c: What impact would not having the resultant reputational 'kite mark' brought by MiFID II equivalence have on your retail client business?

- 2.9.1 The JFSC received 17 responses to this question. Seven respondents felt that the reputational kite mark from MiFID II equivalence would have no or negligible impact on their business. Seven respondents felt that there were some minor benefits derived from the MiFID II kite mark. Three respondents challenged the assertion that MiFID II equivalence carried a reputational kite mark.

- 2.9.2 Of the seven respondents who felt that the reputational kite mark from MiFID II equivalence would have no or negligible impact on their business, only four of these respondents offered a reason for their opinion. Three held the same reason; the reputational kite mark was not applicable because they did not have retail clients. The other respondent felt there would be no impact as they do not hold an IB licence. The composition of these seven respondents was: one bank with an IB licence, two IB Registered Persons, two FSB Registered Persons and two IB and FSB Registered Persons.
- 2.9.3 Of the seven respondents who saw minor benefits from MiFID II’s reputational kite mark, four explained their reasons. One respondent felt that not having the kite mark could raise inconsistencies between (international) group standards and Jersey jurisdictional standards. One respondent felt that the reputational kite mark gave a positive perception that would help client referrals and direct contact from potential clients, particularly in the expat community. One respondent felt that if Jersey decided to strategically grow its EU client base for investment business then the reputational kite mark would ensure that Jersey was on a level playing field with other jurisdictions. A related view was held by another respondent, who felt that demonstrating adherence to a set of principles common to multiple jurisdictions was clearly desirable for business, but like the others found the value difficult to quantify. The composition of these seven respondents was: three banks with IB/FSB licences, two banks who responded anonymously, and two IB Registered Persons.
- 2.9.4 Three respondents, one bank with an IB licence, one FSB Registered Person and one trade association challenged the assertion that MiFID II equivalence carried a reputational kite mark. These respondents did not believe that the regulatory regime was a consideration of retail clients when choosing the services of a financial intermediary.

JFSC Response:

The responses indicate a split between those firms that do not expect to experience any direct impact of a MiFID II “kitemark” on their business (primarily because they do not have retail clients) and those who can envisage some small, but difficult to quantify, benefit. The JFSC also notes that a small minority of respondents challenged the perception that MiFID II equivalence would have any positive connotation for retail clients.

In most cases, the responses appeared to reflect the particular circumstances unique to each respondent. More work will be necessary to understand the prevalence of particular circumstances that would indicate the extent of any potential benefits of a “kitemark” at the entity level.

In addition, the decision on whether to pursue MiFID II equivalence will also need to factor in the potential reputational considerations for Jersey and its financial services industry as a whole.

2.10 Question 7: The JFSC expects that in order to meet MiFID equivalence Jersey's CoP would have to address the points made in the "Other Conduct requirements" section of the Consultation Paper (section 4.6.7 of that Paper). Please provide your comments on the impact of those requirements on your business.

- 2.10.1 The JFSC received 21 comments on one or more parts of this section, some general and some specific to the sub-headings. Where appropriate, responses are disaggregated into an analysis of comments supplied under each heading.

Product manufacturers

- 2.10.2 11 responses covering this point were made. Six respondents expressed support for, or did not identify any impact of, the MiFID product manufacturer requirements; in most cases those respondents suggested that they would already be meeting those requirements. Five respondents expressed some concerns about the requirements.
- 2.10.3 Reasons given for supporting the proposed changes were the importance of this matter to appropriate investor decision making and an observation that it reflects good business practice/typical client expectations.
- 2.10.4 Of the five respondents who expressed concerns about the requirements, the following issues were raised. Firstly, two respondents expressed concern about the application of these requirements to the funds industry, an issue related to the general comments made about the scope of a MiFID II equivalent regime in Jersey. Secondly, two respondents raised some concerns about the extent to which product manufacturers would need to oversee the sale of their products, and the resulting cost of this.
- 2.10.5 One other respondent suggested that significant regulatory conduct issues in Jersey are uncommon, and as such the enhanced conduct requirements would be somewhat unnecessary (this last comment was a general comment applying to all of the conduct changes mentioned under Question 7 of the Consultation Paper, this comment is not repeated for each of the areas surveyed under this question).

Appropriateness

- 2.10.6 15 responses covering this point were made.
- 2.10.7 Six respondents stated that they already applied group or local standards of appropriateness.
- 2.10.8 Five respondents believed the appropriateness conduct requirements would have little or no impact on their business, typically this was because they offered advisory services, they did not deal in complex products, or they were applying appropriateness as part of best practice.
- 2.10.9 Four respondents supported MiFID's appropriateness requirements, and comments and noted that this would potentially raise standards/fill a regulatory gap. One of those respondents noted that they remain concerned about the differentiation of complex and non-complex products by non-Registered Persons.

Best execution

- 2.10.10 19 responses covering this point were made, some of which were highly detailed.
- 2.10.11 Ten respondents were either applying current MiFID I standards (and preparing to upgrade to MiFID requirements) or noted that the changes would not impact on their business. Five other respondents supported enhancements to the best execution regime in Jersey, primarily for reasons of transparency and disclosure. One of those respondents considered Jersey's best execution regime to be significantly out of date.
- 2.10.12 Two respondents identified a potential detrimental impact on their business. One of those respondents provided a rationale for this, explaining that IT development will be required and that this would take time and resources to deliver.
- 2.10.13 Two respondents provided some general comments about the MiFID best execution regime and potential issues associated with this. One respondent was concerned about the risk of not being able to find brokers to execute business if commission charges were an overarching component of best execution. A second respondent raised concerns that some of the specific MiFID obligations, particularly the requirement to publish annual data about execution quality, imposed significant costs whilst providing little benefit in terms of consumer protection/disclosure. This respondent also raised some general concerns about the scale of the MiFID regime as a whole and the challenges that this might pose to local firms and the JFSC. That respondent proposed a principles-based approach to best execution.

Commission, fees, costs and charges

- 2.10.14 19 responses covering this point were made.
- 2.10.15 Nine respondents felt that there would be no impact of complying with the MiFID conduct rules concerning commission, fees, costs and charges, with many of those respondents noting that they currently satisfy those requirements.
- 2.10.16 Three respondents specifically supported the introduction of the MiFID requirements, citing improvements in transparency and clarity of the treatment of third party commissions, fees and other inducements. One of those respondents referred to anecdotal evidence suggesting that Jersey firms are engaged in conduct that would not be permitted in the UK under soft commission rules.
- 2.10.17 Seven respondents cited some impact on their business, or concerns about implementing these requirements. Two of those respondents cited concerns about changes that would limit the ability of firms to receive commission from third parties. Two respondents noted difficulties and costs of developing IT systems and the volume of data capture required to comply with MiFID's conduct rules concerning commission, fees, costs and charges. Two of the respondents expressed some concerns about the provision of a disaggregated breakdown of costs, in particular the ability to do this in a meaningful way, the costs of doing this and the extent of the benefit that could be achieved by this. One respondent noted that there may be some concerns with these requirements, but did not elaborate on those.

Conflicts of interest

- 2.10.18 The JFSC received 19 responses to this question.
- 2.10.19 15 respondents either indicated that the requirements would not have an impact on their business or that they had already, or planned to, address MiFID conflicts of interest requirements. One other respondent strongly supported the changes, noting that the requirements would explicitly put the client's interest first and clarify that

disclosure (as the method of managing a conflict of interest) should only be used only as a measure of last resort, a matter which they thought was currently misunderstood.

- 2.10.20 Four respondents noted some concerns or objection to the conflict of interest requirements. One noted that the use of disclosure only as a last resort may be problematic in some cases of conflict and one noted that there may be some concerns with these requirements, but did not elaborate on those. One expressed concerns about the restrictions on commission-based remuneration models, which may also be problematic from a conflict of interest perspective. The other respondent did not elaborate on their concerns.

JFSC Response:

The majority of respondents were either not affected by the conduct requirements referred to in this question, thought that they would not have an impact on their business, already complied with the requirements, or supported them.

However, there were some concerns expressed in two areas: i) requirements on product manufacturers, and ii) commission, fees, costs and charges. The extent to which those concerns will be realised will depend on the shape of any MiFID II equivalent regime, but the comments will be taken into account when considering potential changes to the current regime.

2.11 Question 8: Please comment how any of the statements concerning Internal Systems and Controls (section 4.7 of the Consultation Paper) will impact your business.

- 2.11.1 The JFSC received 17 responses to this question. This question had three parts, concerning i) standards of information security, ii) recording of telephonic and electronic communications, and iii) requirements concerning client assets. Not all respondents replied to all three parts of this question.
- 2.11.2 Eight respondents either stated that they were compliant, becoming compliant or had no significant issues with the requirements concerning standards of information security, recording of telephonic and electronic communications and requirements concerning client assets.
- 2.11.3 Two respondents believed they would have to review and probably upgrade their standards of information security, although they noted that this would likely be needed in any event given the current focus on this issue more generally.
- 2.11.4 Seven respondents raised some concerns about recording and storage of telephone and electronic communications. Four of the respondents noted that they would have to introduce telephone recording software, which would have a cost implication. Three respondents noted other concerns with telephone recording, in particular the difficulties in applying this to mobile or internet-based communications, such as Skype/FaceTime.

JFSC Response:

The responses suggest that there would, in most cases, be little impact of reflecting the MiFID Internal Systems and Controls requirements in Jersey. The only exception to this appears to be that a number of firms would incur significant costs in complying with the telephone recording requirements. The potential impact of these requirements, and any ability to mitigate them, will be factored into the further consideration of MiFID II equivalence.

2.12 Question 9: Please offer your comments on the transaction reporting requirements (outlined in sub-section 4.8 of the Consultation Paper).

- 2.12.1 The JFSC received 17 responses to this question. Most (14) of those raised concerns about the cost or complexity of the requirements. Many of those responses raised significant concerns and some identified this factor as one of the main operational challenges of MiFID II. The other three respondents, who did not raise such concerns, commented that they were either not impacted by the changes, or already had appropriate systems in place to satisfy the reporting requirements.
- 2.12.2 The costs identified by respondents included the need to invest in a proprietary trading system (or other significant IT development costs), the costs of obtaining and maintaining relevant LEI (Legal Entity Identifiers), general administrative burden of reporting, staffing levels/training and increased charges passed on by third party asset management providers.
- 2.12.3 Despite the concerns about cost and complexity, two of the above respondents noted that the transaction reporting requirements may apply in any event to firms that deal through an EU located entity, regardless of any such requirement being introduced in Jersey.
- 2.12.4 Two of the above respondents requested that if Jersey were to introduce a MiFID II regime, it should avoid any duplication of reporting requirements.
- 2.12.5 Two respondents noted that the impact was not known at this stage because it was unclear whether trades would be reported on their behalf, with one of those respondents noting that the introduction of MiFID II in the UK is changing the dynamic of the current shared reporting arrangements. (Note that, due to the number of responses addressing multiple points, the numbers in this section do not tally exactly).

JFSC Comments:

The vast majority of respondents raised concern about, or noted, the costs associated with these changes, and few firms specifically mentioned any benefits associated with this. The JFSC acknowledges these concerns. At this stage we will be undertaking further work in a number of areas to understand more about the costs and benefits associated with these requirements. In particular, we will be seeking to understand i) to what extent the transaction reporting costs will be incurred in any event, regardless of the adoption of a MiFID II-like framework in Jersey, ii) understanding the costs to the JFSC of introducing equivalent requirements in Jersey, and iii) understanding more about the potential benefits of such requirements.

In any event, the potential impact of introducing such requirements in Jersey, over and above those that would result in any event under the existing regime, will be considered when determining how to proceed with the question of MiFID II equivalence.

2.13 Question 10: If MiFIR's derivatives trading obligation were to apply in Jersey's financial services regime, how would its requirements affect your business?

- 2.13.1 The JFSC received 16 responses to this question. Seven respondents said they did not deal in derivatives or the question was not applicable to their business.
- 2.13.2 Four respondents stated that they traded their derivative transactions through regulated markets, MTFs or OTFs.

- 2.13.3 The other five respondents raised a number of relatively discrete issues. Two respondents raised questions about whether MiFIR's derivative trading obligations would act as a restraint on the freedom of trade for investment managers.
- 2.13.4 One respondent noted that their OTC derivative trading was unlikely to be subject to ESMA trading requirements, however there was some uncertainty about this as the ESMA technical standards are open to interpretation. If the trading of the derivatives did need to occur on a regulated market, MTF or OTF it would increase costs.
- 2.13.5 One respondent noted that, as a branch of an international group, they are likely to be subject to EMIR requirements regardless of the approach taken in Jersey, and therefore any adoption of EMIR requirements in Jersey should avoid duplication, seek consolidation and minimise costs for local Industry arising from any upgrades to regulatory infrastructure, such as trade repositories.
- 2.13.6 One other respondent noted that they would be implementing MiFIR's derivatives trading obligation in any event as part of group policy.

JFSC Response:

Derivatives trading is only carried out by a small number of respondents, and those respondents were in most cases unlikely to be significantly impacted by the adoption of MiFIR derivative trading obligations in Jersey, although this might depend upon exactly how such a regime was implemented. As such, it appears that the introduction of such obligations in Jersey would not represent a significant burden on Industry.

The questions posed about restraints on the freedom of trade for investment managers will require further consideration and analysis.

2.14 Question 11: The JFSC is keen to receive comments from any Registered Persons who are engaged in algorithmic trading, and how they plan to adapt to the new requirements set out in MiFID.

- 2.14.1 The vast majority of respondents either did not comment on this question or noted that they did not engage in algorithmic trading.
- 2.14.2 Three respondents suggested that they were involved to a limited extent in algorithmic trading. Two of those three respondents expressed uncertainty around the current 'high level' definition of algorithmic trading and were seeking greater clarity from the European Commission's delegated regulations/directives. One of those respondents noted that they used algorithmic trading to execute limit orders. The other thought the requirement may impact their segregated order desk and pricing systems.
- 2.14.3 The third respondent explained that they utilise an order execution algorithm, as opposed to a systematic automated/algorithmic trading strategy. They considered that, based on their understanding of EMSA's advice on this topic (Regulatory Technical Standard 6), the relevant MiFID obligations fell almost exclusively on the providers of such algorithms. Consequently this respondent believed that MiFID's requirements would have little practical impact on their business other than some enhanced due diligence requirements.
- 2.14.4 One respondent noted that they were already compliant with the MiFID requirements on best execution, although it is unclear whether this respondent was engaged in algorithmic trading.

JFSC Response:

Based on the responses received, the introduction of the MiFID algorithmic trading requirements would not appear to impose a significant burden on Industry. Depending on the strategic approach adopted to MiFID II equivalence, the JFSC will subsequently welcome more detailed discussion with firms engaged in algorithmic trading.

2.15 Question 12: The JFSC is keen to receive comment on the MiFID requirements from any Registered Person who would describe themselves as a market maker or Systematic Internaliser.

- 2.15.1 The vast majority of respondents either did not comment on this question or noted that they did not engage in this activity. Two respondents commented that they undertake some transactions that could potentially result in them being classified as a market maker or systematic internaliser, with the transactions in question being back to back trades associated with their agency business model (in one case) and matched principal trading (in the other). Both respondents noted that further clarity was needed in order to determine whether such transactions would be caught.

JFSC Response:

At this stage it is unclear whether the respondents to this question would fall within the definition of market makers/systematic internalisers, but if they were the number of firms and transactions caught would appear to be small. Depending on the strategic approach adopted to MiFID II equivalence, the JFSC will subsequently welcome more detailed discussion with firms that could potentially be classified as market makers or systematic internalisers.

2.16 Question 13: The JFSC welcomes comment from Registered Persons who engage in commodities trading on the relevant MiFID II requirements and ESMA's indicated range of position limits.

- 2.16.1 The vast majority of respondents either did not comment on this question or noted that they did not engage in this activity. Two respondents described themselves as taking occasional or limited positions in commodity derivatives. Two other respondents noted that it may be possible, although very rare, for a client to hold a position in a commodity derivative. None of those respondents expressed any concern with ESMA's indicated range of position limits.

JFSC Response:

The introduction of the MiFID II commodity derivative position limit requirements would not appear to impose a significant burden on Industry. Depending on the strategic approach adopted to MiFID II equivalence, the JFSC will subsequently welcome more detailed discussion with firms that could be affected.

2.17 Question 14: The JFSC welcomes stakeholder comment on sanctions and powers of intervention (as covered under Section 4.12 of the Consultation Paper).

- 2.17.1 The JFSC received 15 responses to this question. Seven responses supported the introduction of MiFID's sanctions and powers of intervention, although three of these respondents qualified their support. One respondent said they had no difficulties with operating within this aspect of the MiFID regime. Six respondents commented on the introduction of the relevant sanctions and powers, without clarifying whether or not they supported their introduction. One respondent appeared to have more general concerns about the introduction of such sanctions and powers.
- 2.17.2 Those who provided reasons for supporting the introduction of MiFID sanctions and intervention powers cited improved investor protection and strengthening the fight against wrongdoing within the Industry. One respondent noted that the product intervention powers may have mitigated previous instances of mis-selling.
- 2.17.3 Comments made about the introduction of MiFID sanctions and powers are summarised below. One respondent raised concerns about the use of the "benefit derived" provision for calculating a fine. One respondent hoped that the 10% of turnover figure would apply, in the circumstances of a branch, to the turnover of the branch and not the legal entity. One respondent thought the imposition of sanctions on the individual would deter senior talent from remaining within the Industry, leading to recruitment challenges. One respondent felt that the differences to the current sanctions regime were not material and felt that the existing powers of intervention in Jersey were equivalent to those under MiFID. One respondent recommended that the MiFID sanctions and powers should only apply to MiFID investment firms.
- 2.17.4 One respondent recommended extreme caution about the introduction of the relevant powers and sanctions, commenting that they should only be available in particularly serious or egregious circumstances and that an independent body, such as the Royal Court, should have the power to levy the fines.
- 2.17.5 One respondent requested the creation of another category of licence for Registered Persons who did not wish to do business with EU nationals as a means of avoiding MiFID's requirements with respect to sanctions and powers of intervention. That respondent did not object to the establishment of a sanctions regime for natural persons, but felt that the scale of the fines were driven by factors not relevant to the Jersey regime.
- 2.17.6 One other respondent, commenting on the product intervention powers, suggested the establishment of "lead regulators" in co-operation with other jurisdictions to oversee the development of products developed on a group-wide basis.
- 2.17.7 One respondent noted that the establishment of the relevant MiFID powers should take into account the development of the civil penalties regime. That respondent also sought clarity about the application of the powers to different licence types.

JFSC Response:

Overall these was a reasonable level of acceptance from respondents to the introduction of the MiFID sanctions and powers of intervention, although a number of comments were made about specific elements of those powers and how they could best be implemented. The JFSC acknowledges that the detail of each of those concerns or responses will need to be considered in the event that equivalent powers were proposed for Jersey.

Some of the proposals suggested by respondents, such as limiting fines to 10% of branch turnover and passing responsibility for imposing such fines to another body, appear to represent a significant variation to the MiFID requirements. Those proposals, and the general concerns underlying them, will require further consideration. At this stage, the JFSC anticipates that there would be some difficulties and complexity in establishing a MiFID category of licence only for firms that wished to do business with EU nationals, although we will continue to review these and other potential opportunities that would maximise the benefits of equivalence whilst minimising the disruption that this could cause.

Some of the other proposals are already in place to some extent (e.g. liaison with other relevant regulators) or may be worth further consideration (e.g. differentiating the sanctions and powers of intervention by licence type).

2.18 Question 15: Please comment on the JFSC's policy proposal with respect to derivatives (Section 5 of the Consultation Paper).

- 2.18.1 This question concerned the JFSC's proposal (depending on the approach taken to MiFID II equivalence) to introduce EMIR's clearing, trade reporting and risk mitigation requirements on Jersey Registered Persons who took positions in OTC derivatives. The proposal would effectively channel Jersey counterparties through the EU or EU equivalent clearing and reporting mechanisms, or would require these counterparties to adopt EMIR risk mitigation measures where clearing was not possible.
- 2.18.2 The JFSC received nine responses to this question from entities who dealt in derivatives. Seven of these respondents either identified no or negligible impact from this proposal or were otherwise supportive. One of those respondents qualified their support on the basis that it should prevent any duplicated requirements and seek consolidation where appropriate, and that costs on the local industry should be minimised.
- 2.18.3 The remaining two respondents provided three different comments. One respondent thought that the JFSC should not make the EMIR regime a requirement on Registered Persons with no interest in the EU markets. The other respondent thought that the introduction of EMIR's requirements would be unduly onerous and costly to their business, noting that EMIR requirements would require substantial technological investment and ongoing trade repository reporting costs. This respondent remarked that they do not currently take positions in OTC derivatives subject to an EMIR trading reporting requirement. However, they were aware, and concerned, that the EMIR trade reporting requirements would be extended to cover futures, FX forwards and OTC equity derivatives, which they currently trade. That respondent also expressed a view that a decision about adopting EMIR in Jersey should be taken separately from the MiFID II decision.

JFSC Response:

The majority of respondents that would potentially be affected by the introduction of the EMIR clearing, trade reporting and risk mitigation requirements did not identify any significant negative impact on their business. However, one respondent did identify what they considered to be substantive costs in complying with those requirements.

The JFSC considers that further work will be required to understand the partly divergent responses to this question and to understand, at a more detailed level, the application of EMIR now that we have obtained further information about the type and level of activity taking place in Jersey.

2.19 Question 16a: Given the comments and opinions expressed in the Consultation Paper, do you agree or disagree with the proposal that Jersey's financial services regime should seek to become MiFID II equivalent?

- 2.19.1 The JFSC received 27 responses to this question, either from directly answering the question or through other relevant comments provided elsewhere in the response.
- 2.19.2 These responses can be gathered into four groups of opinion:
- 2.19.2.1 Nine respondents supported the proposal that Jersey should seek MiFID II equivalence. Four of those respondents qualified their support.
 - 2.19.2.2 Nine respondents did not support MiFID II equivalence. (One of those respondents noted that their opposition was based on the proviso that the UK will not introduce a third-country status test based upon the MiFID II regime once it leaves the EU).
 - 2.19.2.3 Three respondents did not specifically oppose MiFID II equivalence, but raised some significant concerns about the introduction of a MiFID II regime.
 - 2.19.2.4 Six respondents appeared to be ambivalent about whether to pursue MiFID II equivalence, but made some comments about the potential implications of doing so.
- 2.19.3 The nine respondents who were in favour of the proposal that Jersey should seek MiFID II equivalence gave a range of reasons for their support for the proposal. A summary of those reasons is provided below:
- 2.19.3.1 Many of the requirements associated with the MiFID II regime would address some current perceived regulatory gaps, improve the ability to control non-compliant behaviour and generally improve consumer protection.
 - 2.19.3.2 Equivalence would benefit Jersey's reputation, an important issue in itself but also of value to international groups in providing comfort to parent undertakings that the Island is compliant with international standards.
 - 2.19.3.3 The implementation of the changes necessary to achieve equivalence would provide a more level playing field for firms effectively within the scope of MiFID II because they have an EU parent and/or because they execute transactions in the EU. It would also simplify requirements for such firms by avoiding the need to create a two-tier approach to regulatory requirements.

- 2.19.4 As reflected in the above summary, it is worth noting that four of the nine respondents who supported pursuing MiFID II equivalence were branches or subsidiaries of EU banks or investment firms.
- 2.19.5 As noted above, four of the nine respondents who supported MiFID II equivalence qualified their support in some way. One respondent noted that, as a Class D investment business, they would not be significantly impacted and therefore suggested that more weight be given to other respondents who were more likely to be affected. One qualified their support on the proviso that Class D investment businesses should not be required to contribute to an investor compensation scheme. One noted that the regime should permit entities to obtain an exemption from CRDIV obligations if such an exemption would be available to an equivalent firm in the EU. One respondent noted that they were keen to understand more about the net impact on customers and business revenues.
- 2.19.6 The composition of the nine respondents who were in favour of Jersey seeking MiFID II equivalence was three banks (with IB and/or FSB licences), three IB Registered Persons, one FSB & IB Registered Person, one FSB Registered Persons and one non-Registered Person.
- 2.19.7 A breakdown of the reasons given by the 12 respondents for either opposing (nine respondents) or raising significant concerns about (three respondents) MiFID II equivalence are set out below.
- 2.19.8 The main concern raised by six of those respondents was the potentially negative impact on Jersey's funds sector (which includes: public and private collective investment funds, and other investment schemes). A number of significant concerns were raised about the application of MiFID II to advisers, distributors and (potentially) managers, of public or private collective investment funds, and advisers and managers of "investment schemes" distinct from collective investment funds who are currently relying on exemptions from authorisation under the FS(J)L.
- 2.19.9 The particular concerns raised by those six respondents can be summarised as follows: The funds industry forms a significant proportion of the financial services industry in Jersey and its success is intrinsically linked to having in place a proportionate regulatory regime which, in some appropriate cases, is flexible and 'light-touch'. The introduction of a MiFID II regime in Jersey would provide very limited benefits but would seriously disrupt the existing business models for fund functionaries and impose significant additional costs. In some cases, the introduction of MiFID II would remove the very elements that make the current regime so attractive. As such, the introduction of MiFID II requirements on the funds industry was considered by those respondents to be a material threat to the funds industry in Jersey and Jersey's competitiveness as an international finance centre.
- 2.19.10 In considering the concerns raised by Industry, it is also worth referring back to the potential impact of the MiFID II corporate governance requirements and the potential impact on the TCB sector (see section 2.4).
- 2.19.11 The other six respondents' main concern was that the general benefits of achieving equivalence under MiFID II would be outweighed by the costs. In summary, those respondents considered that the benefits to Industry (regulatory kitemark and passporting provisions) were very limited. Conversely, the costs, as summarised elsewhere in this feedback paper, were considered by those respondents to be significant, and to outweigh the benefits identified. One of those respondents suggested that the introduction of a MiFID II regime in Jersey may cause some multi-national organisations to consider other cross-border advisory models, which could

have an impact on the size of the local workforce and the financial performance of the local operation. Some of the respondents noted that further work was needed to quantify the impact of a MiFID II regime.

- 2.19.12 The composition of the above 12 respondents who did not support or raised significant concerns about MiFID II equivalence was three banks with IB/FSB licences, two banks that responded anonymously, two FSB Registered Persons, one IB Registered Person, one FSB & IB Registered Person and three non-Registered Persons.
- 2.19.13 The comments made by the six respondents who appeared to be ambivalent to MiFID II reflected some of the above concerns about the cost-benefit trade-off, but were generally less concerned about that trade-off, raising less concerns about costs, or being more optimistic about potential benefits. Most of those respondents suggested that further analysis was required to understand more about, and where possible quantify, the costs and benefits. They also made some other relevant observations about the potential benefits of the regime, with one respondent noting that future instances of investor loss/non-compliance may raise questions about the lack of equivalence.
- 2.19.14 The composition of the six “ambivalent” respondents was: two IB Registered Persons, one anonymous “Wealth Manager”, two FSB Registered Persons and one non-Registered Person.

JFSC Response:

The feedback to this question highlights a number of significant concerns about the introduction of a MiFID II-like regulatory regime in Jersey, but also highlights a number of actual or potential benefits, many of which are related to the strengthening of the regime in general as opposed to the benefits associated with equivalence per se (i.e. the passporting/branch provisions).

Clearly, the impact of any changes on the funds, FSB and TCB sectors in Jersey will have to be carefully considered. As noted in sections 2.2 and 2.4, the JFSC considers that further work is necessary to a) understand more about the scope of coverage of MiFID II in those areas, and any exemptions that may be available, and b) in the event that those areas are caught by MiFID II, to consider further the appropriateness of the relevant MiFID II requirements to those sections of Industry. Setting this matter aside, the question at the core of this consultation exercise (whether/how to pursue MiFID II equivalence) comes down to a consideration of costs and benefits. Feedback by respondents on this point is clearly split, but there is also a general recognition that it would be beneficial to provide more clarity about, and where possible quantify, those costs and benefits. The JFSC will consider what further analysis it can bring to those areas and will explore a broad range of options in terms of pursuing an approach that generates more benefits than costs (for Industry, the public, and Jersey as a whole) over an appropriate time horizon.

It is too early to predict what such a solution might look like, however at this stage of the consultation process, and based on relatively high-level analysis conducted to date, we would make the following observations. Firstly, a full ‘cut and paste’ of MiFID, MiFIR and EMIR, whilst it would clearly strengthen any equivalence application, would not appear to be an appropriate approach for Jersey to adopt. Secondly, regardless of the approach adopted to MiFID II equivalence, this consultation process (together with our general supervisory activities and engagement with Industry) has identified some gaps in the current investment business regulatory framework which need to be addressed.

2.20 Question 16b: Should the JFSC apply MiFID II standards to all investment business, irrespective of the location of the client?

- 2.20.1 The JFSC received 15 responses to this question. Seven respondents thought that if the JFSC was to apply a MiFID II regime in Jersey, then the regime should cover all clients irrespective of location. Five respondents thought they should not apply to all clients. Three respondents provided general comments or a mixed view.
- 2.20.2 Of the seven respondents in favour of applying MiFID II standards to all clients, the general reasons provided were that this makes sense in order to treat customers fairly, that such a requirement would apply to an equivalent EU firm, and that it would avoid the need to for a complex and costly dual regime.
- 2.20.3 Of the five respondents who thought that MiFID II standards should not apply to all clients, the general themes of the remarks were that a MiFID II-like regime should not apply to businesses that did not seek EU clients and operated via passive marketing/reverse solicitation because those firms would achieve little or no benefit from compliance with those requirements.
- 2.20.4 The views of other respondents that made comments or mixed responses are summarised below: one respondent made a general observation that it would be implementing MiFID II obligations to its total client base in Jersey and Guernsey. One respondent noted that there were limited benefits of extending the regime to cover non-EU clients, but there were some marginal benefits from having the MiFID II “kitemark”. One respondent was both for and against applying MiFID II’s requirements to all clients regardless of their location. The response provided by this respondent covered two distinct entities who held different opinions on this matter.

JFSC Response:

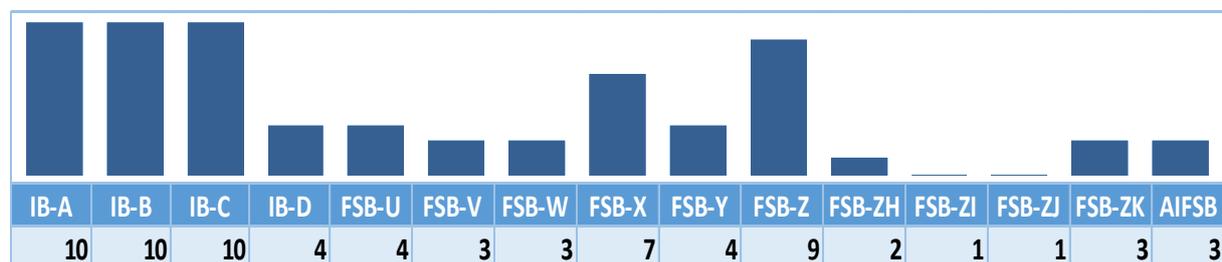
Responses to this question were quite mixed, and credible arguments were made for both potential approaches. Whilst there is some precedent for establishing different regimes determined by the location, or residence, of a client, adopting such an approach to MiFID II would need careful, detailed, consideration. This will be one factor that will be considered in determining the approach to MiFID II.

Appendix A – Analysis of Respondents

The JFSC received 27 responses to this consultation, 22 of these respondents are Registered Persons, with the others being law firms, trade bodies or consumer groups. The table below lists the respondents.

Respondent
Asset Risk Consultants (Jersey) Limited
Auriel Capital Limited
Barclays Private Client International (BPCI)
Bedell Cristin Jersey Partnership
BNP Paribas Securities Services SCA (CI), Jersey Branch + BNP Paribas SA, Jersey Branch
Brevan Howard Capital Management Limited
Brewin Dolphin Ltd
Elian
Jersey Consumer Council
Jersey Funds Association
JFL - Anonymous - a
JFL - Anonymous - b
JFL - Anonymous - c
JFL - BlackRock Inc. (BlackRock (Channel Islands) Limited "BCI")
JFL - Stanhope Capital (Jersey) Ltd
JFL - The Association of Investment Companies (AIC)
Lloyds Bank International Limited
Meridian Asset Management (C.I.) Ltd
Mourant Ozannes L.P.
Perdurance Asset Management Limited
SG Hambros (CI) Ltd "SGPBH"
Snowstream Capital Management LP
Standard Chartered Bank (Jersey Branch)
SWM Limited (trading as SWM Synergy)
The Royal Bank of Scotland International Limited (RBSI) + Coutts
Vantage Limited
Wealth Financial Planning

The chart below provides a distribution of Registered Person respondents and the licences they hold (not including any banking licences held).



Respondents, using the responses template, were requested to identify which MiFID services and activities they provided, and which financial instruments they dealt in, as if a MiFID equivalent regime were in effect in Jersey. The answers given by respondents should be treated as indicative, this is because of differences in definitions between IB in Jersey, and Investment Services and Activities as defined by MiFID.

The tables below set out the cumulative breakdown of responses by i) MiFID Services and Activities, and ii) MiFID financial instruments. The most common MiFID services and activities were: investment advice, reception and transmission of orders in relation to one or more financial instruments, executions of orders on behalf of clients, and portfolio management. The most common financial instruments were: transferable securities, money market instruments, units in collective undertakings, and options, futures, swaps, forward rate agreements/derivative contracts.

MiFID II Services & Activities	Total
Reception and transmission of orders in relation to one or more financial instruments	11
Execution of orders on behalf of clients	11
Dealing on own account	2
Portfolio management	11
Investment advice	14
Underwriting of financial instruments without a firm commitment basis	1
Placing of financial instruments without a firm commitment basis	1
Operation of a Multilateral Trading Facility	0
Operation of an Organised Trading Facility	0
None of the above	2

MiFID financial instruments	Total
Transferable securities	17
Money-market instruments	15
Units in collective investment undertakings	16

Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;	13
Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event	7
Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled	5
Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments	4
Derivative instruments for the transfer of credit risk	2
Financial contracts for differences	5
Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF	1
Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).	0
None of the above	1